No.

IN THE
SUPREME COURT OF THE UNITED STATES

TERRANCE GUINN,
Petitioner,

v.

UNITED STATES Of AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Terrance C. Guinn
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Port Gibson, MS 39150
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QUESTIONS PRESENTED

Under 28 U.S.C. § 1651 and 28 U.S.C. § 2255(e), petitioner can collaterally challenge their convictions on any ground cognizable on collateral review, to certain claims that indicate factual innocence or that rely on constitutional-law decisions made retroactive by this Court.

The question presented is whether petitioner is entitled to seek relief under 28 U.S.C. § 1651 and 28 U.S.C. § 2255(e) based on his claim that his conviction for possessing a firearm, in violation of 18 U.S.C. 922(g)(1) is invalid under Rehaif due to actually innocent.

RELATED PROCEEDINGS

Terrance Guinn v. United States Civil No. 5:99-cr-8DCB
Terrance Guinn v. United States Civil No. 5:23-CV-48

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Miscellaneous

REPORTS OF OPINIONS

The decision of the Court of Appeals for the Fifth Circuit is reported as United States v. Terrance Guinn, No. 23- 60386 (5th Cir. December 6, 2023). It is retyped as Appendix A.

The order for the United States District Court is reported as Terrance Guinn v. United States No. 5:23-CV-48 is retyped as Appendix B.

JURISDICTIONAL STATEMENT

The decision by the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment in the Southern District of Mississippi. Consequently, Petitioner files the instant Application for a Writ of Certiorari under the authority of Title 28. U.S.C.. § 1254(1). The judgment of the court of appeals was entered on December 6, 2023.

RELEVANT CONSTITUTION AND FEDERAL STATUTE

The relevant constitutional and statutory provisions are set forth at App., infra, 10a.

STATEMENT OF THE CASE

No one is perfect—not even judges. On rare occasions, courts fail to apply dispositive precedent. Or they render their judgment unaware that the legislature repealed the statute at issue. Or they interpret the Constitution to prohibit certain conduct, and this Court confirms years later that the Constitution allowed that conduct all along. Rehaif claims undisputedly authorizes litigants to seek relief from final judgments based on new rule of law.

Petitioner presents a straightforward claim that his evidence which bears on his innocence standing alone it justifies relief under Rehaif. Moreover, petitioner claims he was sentence to probation in his predicate offence in Terrance Guinn vs. State of Louisiana Case No. 42042 (1997), which he had not been punishable with any prison time, possession of firearms didn't constitute a crime under 18 U.S.C. § 922(g)(1).

The Supreme Court is the Court of last resort and Petitioner has no other court for relief and there is no other adequate remedy at law in which relief may be granted.

On August 16, 1999, defendant pleaded guilty, pursuant to 18 U.S.C. § 922(g)(1), to possession of a Firearm by a Convicted Felon. Guinn was sentenced to thirty (30) months imprisonment, to be followed by two (2) years term of supervised release.

On or about May 30, 2023, Guinn filed a 28 U.S.C. § 1651 and/or WRIT OF RELIEF FROM JUDGMENT. The district court denied this 28 U.S.C. § 1651 and/or WRIT OF RELIEF FROM JUDGMENT on July 7, 2023.

Mr. Guinn then timely filed a notice of appeal for his ALL WRIT ACT Pursuant to 28 U.S.C. § 1651 and/or WRIT OF RELIEF FROM JUDGMENT was affirmed by a Panel of the Fifth Circuit on December 6, 2023.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. Guinn is actually innocent pursuant to his Rehaif claim.

In *Rehaif v. United States, 139 S. Ct 2191 (2019)*, supplied a new rule of law that applies retroactively to Guinn innocence and thus the appeal court erred. We therefore must consider whether in Rehaif the Supreme Court newly recognized a right and whether that right has been made retroactive to Guinn case. We first conclude that the Supreme Court did indeed recognize a new right- the petitioner right to have the Government proved beyond a reasonable doubt that the petitioner knew of his felony status when he possessed a firearm.

Before Rehaif, every circuit court of appeals to address the issue, including the 5th circuit, had held that § 922(g)'s knowledge requirement did not apply to the fact of the petitioner status as a felon. See *United States v. Smith, 940 F.2d 710 (1st Cir. 1991)* However, the

Supreme Court explicitly held otherwise in *Rehaif, 139 S. Ct 2129 (2019)*.

Next, that rule applies retroactively. The Supreme Court has explained that "[n]ew substantive rules generally apply retroactively" to finalized convictions. *Schriro v. Summerlin, 542 U.S. 348 (2004)* (emphasis omitted). " This includes decisions that narrow the scope of a criminal statute by interpreting its terms...." Id. "Such rules apply retroactively because they "necessarily carry a significant risk that the petitioner stand convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." Id. At 352 (quoting *Bousley v. United States, 523 U.S. 614 (1998))*.

We thus have said in another context that "new [Supreme Court] decisions interpreting federal statutes that substantively define criminal offenses automatically apply retroactively." *Garland v. Roy, 615 F.3d 391 (5th Cir. 2010)*. The Rehaif decision did just that. It recognized for the first time an essential element mens rea element of a crime in a federal statute. Moreover, Guinn invoked § 2255(e) to bring a habeas action on the grounds that he was legally innocent and 18 U.S.C. § 922(g)(1), that could not be imposed today-it would be illegal. However, Guinn cannot use § 2255 to challenge his § 922(g) conviction based on Rehaif.

Guinn contends that his plea agreement waiver was unknowing and involuntary due to ineffective counsel erroneous advice in negotiating and entering Guinn into a plea agreement which contains an appeal and collateral relief waiver. *Strickland v. Washington, 466 U.S. 668.*

The petitioner contends that he is innocent of the conviction under 18 U.S.C. § 922(g) (1) unlawfully possessing firearms. To prevail on this argument, Mr. Guinn must show that "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *United States v. Powell, 159 F.3d 500 (10th Cir. 1998)*

In this case, actual innocence turns on whether the Louisiana conviction was punishable by over a year in prison. Terrance Guinn vs. State of Louisiana Case No. 42042 (1997). The question is whether Mr. Guinn drug crime was "punishable" by over a year in prison. The term "punishable" means "capable of being punished by law or right." *Schrader v. Holder, 704 F.3d 980 (D.C. Cir. 2013)* (quoting Webster's Third New International Dictionary 1843 (1983)); see also id. (stating that "the commonsense meaning of the term 'punishable' is "any punishment capable of being imposed").

So we considered whether the drug crime could have subjected Mr. Guinn to imprisonment for over a year. To answer that question, we apply Louisiana's

sentencing law. *United States v. Oman, 91 F.3d 1320 (9th Cir. 1996)* ("The term 'crime [ ] punishable' [in 18 U.S.C. § 922(g)(1)] refers to crimes defined by the law of the jurisdiction in which the predicate crime arose.")

In applying Louisiana law, we focus on the moment that Mr. Guinn possessed the firearms. *United States v. Benton, 988 F.3d 1231 (10th Cir. 2021)* (stating that 18 U.S.C. § 922(g) apples only if the petitioner had knowledge of the relevant status when he or she possessed the firearm). A crime is punishable by "the maximum amount of prison time a particular defendant could received." *United States v. Brooks, 751 F.3d 1204 (10th Cir. 2014)*

So we considered whether Mr. Guinn's drug conviction- rather than the conviction of a hypothetical defendant- could have triggered imprisonment for over a year when he possessed the firearms. To determine whether Mr. Guinn could have been imprisoned for more than a year when possessed the firearm, we consider only his "record of conviction." *United States v. Brooks, 751 F.3d 1204 (10th Cir. 2014)* (quoting C*arachuri-Rosendo v. Holder, 560 U.S. 582 (2010))*. "The mere possibility" of other facts "outside the record" will not change the maximum prison term. *Carachuri-Rosendo v. Holder, 560 U.S. 582 (2010)* (interpreting the Immigration and Nationality Act.

The Louisiana sentencing court determined that Mr. Guinn had satisfied all of the requirements for

probation and drug treatment in lieu of imprisonment. So the district court had to impose probation and drug treatment.

Louisiana law allowed the sentencing court to deviate from the standard range. Art. 894. Suspension and deferral of sentence; probation in misdemeanor cases

A. (1) Notwithstanding any other provision of this article to the contrary, when a defendant has been convicted of a misdemeanor, except criminal neglect of family, or stalking, the court may suspend the imposition or the execution of the whole or any part of the sentence imposed, provided suspension is not prohibited by law, and place the defendant on unsupervised probation or probation supervised by a probation office, agency, or officer designated by the court, other than the division of probation and parole of the Department of Public Safety and Corrections, upon such conditions as the court may fix.

Such Suspension of sentence and probation shall be for a period of two years or such shorter period as the court may specify. Because Mr. Guinn's past conviction had not been punishable with any prison time, possession of firearms didn't constitute a crime under 18 U.S.C. § 922(g)(1). *United States v. Williams, 5 F.4th 973 (9th Cir. 2021)* (concluding that a state crime is not punishable by imprisonment for over a year "when the statutory maximum sentence exceeds one year but the maximum sentence allowed under the State's mandatory

sentencing guidelines does not"); *United States v. Haltiwanger, 637 F.3d 881 (8th Cir. 2011)* (holding that a defendant's prior drug crime in Louisiana didn't constitute as a felony because his maximum sentence was limited to probation and drug treatment in lieu of imprisonment. Moreover, Guinn was prejudice from the proceeding because counselor(s) deficient performance procedurally barred him from exhausting his appeal and collateral relief remedies, but for counselor(s) deficient performance in entering Guinn into a plea agreement, Guinn would have not pled guilty and exhaust his appeal or collateral relief remedy. *United States v. White, 307 F.3d 336 (5th Cir. 2002)*

Guinn contends that his guilty plea was unknowing and involuntary due to that he is actually innocent of the crime of felon in possession of firearm in violation of § 922(g)(1) and that his guilty plea was unknowing and involuntary due to change in law imprisonment for a term exceeding one year under the same issues present above.

28 U.S.C. § 2255(e) allows petitioner to pursue § 1651 relief whenever the § 2255 remedy itself is "unavailable." 28 U.S.C. § 2255(e). This includes the situation where a retroactive change in the interpretation of statutory law means that a petitioner is legally innocent of the crime for which he was convicted.

First, the § 2255 remedy cannot "test" the legality of a conviction at all, let alone legally innocent

of the crime, if the court applies the wrong substantive law. That is like a schoolteacher "testing" a student's understanding with a good test but a wrong answer key. Even if the exam asks the relevant questions, if the right answers are marked as wrong and the wrong answers as right, the student fails. In such a situation, we would not say that the exam "tests" the student's skills but that it was arbitrary. So too, as here, when a court applies the wrong legal standards in analyzing the legality of one's conviction. When the remedy applies the wrong substantive law, it may "score," but it does not "test."

This is especially true when the student cannot correct the error by simply bringing the mistake to the teacher's attention. By analogy with the judicial system, teachers, like a panel of a court of appeals, would be barred from changing their own answer keys, even if they agreed it was wrong. E.g., *Doscher v. Sea Port Grp. Sec., LLC, 832 F.3d 372 (2d Cir. 2016)* ("[A] three-judge panel is bound by a prior panel's decision until it is overruled either by this Court sitting en banc or by the Supreme Court."). The student must instead try appealing to the whole active faculty, which, if like the courts of appeals, will only consider overruling an individual teacher in 0.19 percent of requests, Ryan W. Copus, Statistical Precedent: Allocating Judicial Attention, *73 Vand. L. Rev. 605, 608 (2020)* ("The [federal courts of appeals] now review a mere 0.19 percent of decisions en banc."), and would, if like the courts of appeals, agree to replace the answer key only thirteen percent of the time it actually debated the issue.[1]

In other words, the student, like someone petitioning for en banc review, is likely to succeed in reversing the teacher's (or panel's) decision less than .025 percent of the time.[2]

And, if that fails, the student must appeal to the school principal, who, like this Court, accepts less than one percent of requests for review, see A Rep's. Guide to Applications Pending Before The Sup. Ct. of the U.S. 15, https://www.supremecourt.gov/publicinfo/reporterguide.pdf (noting that the Supreme Court grants cert in roughly one percent of cases), and even then usually only when an unrelated criterion is met—that different classroom teachers are shown to be using different answer keys, see S. Ct. R. 10(a)-(b) (noting "[a] petition for a writ of certiorari will be granted only for compelling reasons," most notably when a "court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter [or] has decided an important federal question in

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[1] According to a report produced by the Seventh Circuit, during calendar year 2019, the federal courts of appeals "terminated on the merits" 36 cases en banc. See U.S. Ct. of Apps. For the Seventh Circuit, The Judicial Business of the United States Courts of the Seventh Circuit, 2019, U.S.C.A. tbl. 2, available online at http://www.ca7.uscourts.gov/annual-report/annualreport.html (providing this information) in Table 2). That data, however, failed to include 5 cases from the Sixth Circuit. See Michael R. Williams, 2019 Sixth Circuit En Banc Opinions, Mich. B.J., July 2020, at 38. Thus, a total of 41 cases went en banc and were terminated on the merits. Of those 41 cases, in

a way that conflicts with a decision of a state court of last resort" or vice versa). How could such a process "test" the student's knowledge when the answer key is wrong?

Finally, the Fifth Circuit's opinion ignores "the new rule requiring for the first time an essential element mens rea element of a crime in a federal statute and that he was legally innocent and 18 U.S.C. § 922(g)(1), that could not be imposed today-it would be illegal.

2. Whether the US Appeals Court for the 5th Circuit affirmed decision is in conflict with the US Supreme Court pursuant to the Rehaif v. United States, 139 S. Ct. 2191 (2019) in denying Guinn the right to appeal?

Mr. Guinn contends that a certificate of appealability is also not required for petitioners seeking a writ of coram nobis and/or pursuant to 28 U.S.C. § 1651 and/or WRIT OF RELIEF FROM JUDGMENT; however, the writ of coram nobis is only available for those who are no longer in- custody (or on probation) and the issues

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only 5 did the en banc court vote to overturn prior circuit precedent. See Brown v. Sage, 941 F.3d 655 (3d Cir. 2019) (en banc); Yarbrough v. Decatur Hous. Auth., 931 F.3d 1322, 1325 (11th Cir. 2019) (en banc); United States v. Havis, 927 F.3d 382, 384 (6th Cir. 2019) (en banc); Hulbert v. Black, 925 F.3d 154 (4th Cir. 2019) (en banc); United States v. Burris, 912 F.3d 386, 390 (6th Cir. 2019) (en banc)

[2] This figure represents the compound probability of the granting of the petition for rehearing en banc and of reversal. Mathematically, that is 0.0019 multiplied by 0.13, which equals 0.00024 or 0.0247 percent.

raised in the petition could not have been known while the petitioner was in-custody. *United States v. Baptiste, 223 F.3d 188 (3rd Cir. 2000)*

The Fifth Circuit's consideration of the merits of Mr. Guinn's claim in its threshold analysis of whether his motion "alleged" a proper claim for relief under 28 U.S.C. § 1651 and 28 U.S.C. § 2255(e) was improper and constitutional. In looking past the allegations of Mr. Guinn's motion and considering the merits of his claim for relief, the Fifth Circuit deprived Mr. Guinn of the opportunity to fully litigate the merits of his claim. Indeed, the district court's dismissal was based on its construction of the Writ Act Pursuant to 28 U.S.C. § 1651 and/or Writ Of Relief From Judgment motion as an improper habeas petition, and that court did not evaluate the merits of Mr. Guinn's claim for relief. On appeal, the Fifth Circuit analyzed of the facts underlying Mr. Guinn's claim—without the benefit of a full briefing on the issues—and considered whether he may be entitled to relief on his claim. After determining that the defects alleged by Mr. Guinn's would not entitle him to relief, the Fifth Circuit affirmed the district court's dismissal.

The Fifth Circuit's practice of conflating merits-based analyses with threshold procedural questions is not limited to Mr. Guinn's case or WRIT ACT Pursuant to 28 U.S.C. § 1651 and/or WRIT OF RELIEF FROM JUDGMENT motions. The court similarly has violated due process in the context the denial of Certificates of

Appealability and the dismissal of habeas petitions on procedural grounds.

With respect to Certificates of Appealability, this Court already has, on multiple occasions, struck down the Fifth Circuit for adjudicating the merits of a claim prematurely. See *Buck v. Davis, 137 S. Ct. 759 (2017); Miller-El v. Cockrell, 537 U.S. 322 (2003)*. Much like the determination of whether a litigant has "alleged" or "asserted" a proper claim for relief, the COA stage demands only a "threshold inquiry" that "does not require full consideration of the factual or legal bases adduced in support of the claims." *Miller-El, 537 U.S. at 336*. That inquiry "is not coextensive with a merits analysis," and this Court has reversed the Fifth Circuit when it has "phrased its determination in proper terms . . . but [] reached [its] conclusion only after essentially deciding the case on the merits." See *Buck, 137 S. Ct. at 773*. Prior to Buck, in Miller-El—another case reversing the Fifth Circuit on its COA determination—this Court explained that "[w]hen a court of appeals sidesteps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." *537 U.S. at 336-37*. Similarly here, the Fifth Circuit decided the merits of Mr. Guinn's appeal and used that analysis to justify a jurisdiction-based dismissal. In doing so, it violated Mr. Guinn's due process rights and committed similar abuses to those that this Court repeatedly has addressed in the COA context.

With respect to habeas petitions, the Fifth Circuit has engaged in a practice of dismissing habeas petitions as procedurally barred when the court determines that the "new right" asserted by the petitioner does not entitle the petitioner to relief. This practice has occurred most notably in the context of claims brought under *Johnson v. United States, 135 S. Ct. 2551 (2015)*. In *United States v. Williams, 897 F.3d 660, 662 (5th Cir. 2018)*, the Fifth Circuit denied a COA to a habeas petitioner who filed a Johnson claim challenging his convictions under 18 U.S.C. § 924(c), on the grounds that Johnson did not establish a "newly recognized" right applicable to the petitioner's case. That determination clearly was a merits-based assessment of the petitioner's entitlement to relief—not a proper basis for enforcing a procedural timeliness bar.

Indeed, the problematic implications of the Fifth Circuit's practice are not purely hypothetical—they already are apparent. In the aftermath of Williams, the Fifth Circuit did, in fact, invalidate § 924(c) pursuant to this Court's decision in *Sessions v. Dimaya, 138 S. Ct. 1204 (2018)*, which was a "straightforward application" of Johnson. But, as a result of Williams, prospective petitioners who have legitimate claims that their convictions are unconstitutional may be deterred or prevented from filing petitions in light of the Fifth Circuit's improper and incoherent decision in Williams. Accordingly, the Fifth Circuit's approach to threshold procedural and jurisdictional questions not only interferes with the rights of the litigants who are directly

affected, such as Mr. Guinn, but it creates bad law that affects the rights of countless others.

3. Whether the US Appeals Court for the 5th Circuit affirmed decision is in conflict with the US Supreme Court pursuant to Rehaif in denying Guinn to an evidentiary hearing?

The Court's decisional authority and Congress's statutory mandate entitles a 28 U.S.C. § 2255 movant to an evidentiary hearing whenever the § 2255 movant's well-pleaded factual allegations would, if proven, warrant habeas relief. 28 U.S.C. § 2255(b); *Fountaine v. United States, 411 U.S. 213 (1973)*; *Townsend v. Sam, 372 U.S. 293 (1963)*. If these allegation are proven that he is innocent, then Mr. Guinn is entitle to have his conviction and sentenced vacated, this fulfills the statutory (and decisional authority) requirements for an evidentiary hearing. By refusing to conduct an evidentiary hearing, the district denied Mr. Guinn not only his statutory right to prove his claim, but also his statutory right to be heard. Virtually, every other circuit would find the district court's resolution of the motion debatable. See, e.g. *Lafuente v. United States, 617 F.3d 944 (7th Cir. 2010)* (per curiam) (district court abused discretion by denying § 2255 motion "without discovery or a hearing", "The petitioner's pro se motion, sworn statement, and corroborating evidence show that his allegations are plausible, and are sufficient to warrant further inquiry by the district court."); *United States v. Jackson, 209 F.3d 1103 (9th Cir. 2000)* (district court abused distraction

denying evidentiary hearing, given that "the motion, files and record in this case could not have shown conclusively that Jackson is not entitle to relief).

4. Guinn's Rehaif claim is neither procedural barred nor procedural defaulted.

The terms "procedurally barred" and "procedurally defaulted" have distinct meanings. A procedural bar prevents a defendant from raising arguments in a § 2255 proceeding that he raised and we rejected on direct appeal. *Stoufflet v. United States, 757 F.3d 1236, 1239 (11th Cir. 2014)* (collecting cases). A defendant can overcome a procedural bar when, as here, there is an intervening change in law. See *Davis v. United States, 417 U.S. 333, 342 (1974)*.

By contrast, a "procedural default" occurs when a defendant raises a new challenge to his conviction or sentence in a § 2255 motion. *Lynn v. United States, 365 F.3d 1225, 1234 (11th Cir. 2004)*. If a defendant fails to raise an issue on direct appeal, he may not present the issue in a § 2255 proceeding unless his procedural default is excused. *McKay v. United States, 657 F.3d 1190, 1196 (11th Cir. 2011)*. To overcome a procedural default, a defendant must show either (1) cause and prejudice, or (2) a miscarriage of justice, or actual innocence. Furthermore, Guinn has overcome procedural default by showing "actual innocence". In moving to vacate the conviction, Mr. Guinn challenges his guilty plea, arguing that it was unknowing and involuntary. Generally,

a defendant may collaterally attack a guilty plea as unknowing and involuntary only if he had challenged the plea through a direct appeal; otherwise, the challenge is ordinarily subject to procedural default. *Bousley v. United States, 523 U.S. 614 (1998).*

Mr. Guinn did not challenge his guilty plea on direct appeal, so his claim would ordinarily be subject to "procedural default." But a defendant challenging the validity of a guilty plea can overcome a "procedural default" by showing actual innocence. Id. at 622.

No reasonable juror could find Mr. Guinn guilty of unlawfully possessing firearms because his prior conviction hadn't triggered the possibility of any imprisonment at the moment that he possessed the firearms. We thus should conclude that

- Mr. Guinn has overcome a procedure barred or procedural default and
- the appeals court should have considered the merits of Mr. Guinn's appeal brief and reverse and remand.

The Supreme Court explained in Bousley that the separation of powers motivates the differential treatment of substantive and procedural new rules. See *Bousley, 523 U.S. 620, 118 S.Ct. 1604.* Only Congress, not the courts, may criminalize conduct. See id. When the Supreme Court recognizes a new substantive rule, it is recognizing that the lower courts have, in violation of the separation of powers, construed a statute too broadly so as to criminalize conduct that Congress itself never

criminalize. See id.; see also *In re Wright, 942 F.3d 1063 (11th Cir. 2019)* (Rosenbaum, J., concurring)

I find that Rehaif created a new substantive rule because it altered the class of persons that § 922(g) may punish. Rehaif "narrow[ed] the scope of [§ 922(g)] by interpreting its terms." Specifically, Rehaif prohibited the state from using § 922(g) to punish a defendant who did not "know" that he was a felon. Indeed, Mr. Guinn argues that because he never served any prison time, the government may not have been able to prove that he "knew" he had been convicted of a crime "punishable by imprisonment for a term exceeding one year." In, punishing Mr. Guinn without proving that he knew of his status as a felon, this Court unintentionally punished an individual whom Congress never intended to punish under § 922(g).

The Supreme Court in Rehaif announced a new rule, and that new rule applies retroactively to cases on collateral review because it is a substantive rather than procedural rule.

We find, therefore, that Guinn has presented a valid claim that he has been denied a right to have his conviction vacated under Rehaif. When Guinn's constitutional rights to have his conviction vacated under Rehaif has been violated, the sole remedy is to reverse the conviction and dismiss the charges.

In denying a remedy to an innocent individual

may violate the Due Process Clause, U.S. Const. Amend V, because doing so "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Medina v. California, 505 U.S. 437, 445 (1992)*. Since "concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system," *Schlup v. Delo, 513 U.S. 298 (1995)*, the conviction of an innocent person presses hard against a "fundamental" principle of justice and may thus contravene the Due Process Clause. As this Court has recognized, § 2255 and § 1651 motions are meant to prevent any "fundamental defect which inherently results in a complete miscarriage of justice." *Davis v. United States, 417 U.S. 333, 346 (1974)* (internal quotation marks omitted)

Guinn case must rest on its own factual bottom and we hold that the facts of this case are indistinguishable in any material particular from Rehaif. To conclude that there has been a clear violation of the petitioner's constitutional rights under Rehaif, and, therefore, the petitioner conviction must be vacated due to the fact Guinn carry a significant risk that he stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him.

5. Whether the Courts lacks jurisdiction pursuant to Rehaif?

Here, Guinn raises such a jurisdictional claim, premised upon this Court's long-standing recognition

that when a federal court convicts and sentences a defendant whose conduct Congress has not made criminal it acts without jurisdiction. See *United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32, 34 (1812)* (finding that federal courts lack jurisdiction to recognize crimes not defined by statute); *United States v. New Bedford Bridge, 27 F.Cas. 91, 103 (D. Mass. Cir. 1847)* (Woodbridge, J., in chambers) (stating "it is considered that no acts done against [the government] can usually be punished as crimes without specific legislation" for in those cases the court does not "have jurisdiction of the offence") (cleaned up); *United States v. Hall, 98 U.S. 343, 345 (1878)* ("[C]ourts possess no jurisdiction over crimes and offences committed against the authority of the United States, except what is given to them by the power that created them."); *Pettibone v. United States, 148 U.S. 197, 203 (1893)* ("The courts of the United States have no jurisdiction over offenses not made punishable by the Constitution, laws, or treaties of the United States."); *United States v. Davis, 139 S. Ct. 2319, 2325 (2019)* ("Only the people's elected representatives in Congress have the power to write new federal criminal laws.") (internal citation omitted). This Court's decision in *Rehaif v. United States, 139 S. Ct. 2191 (2019)*, made apparent that the district court lacked jurisdiction to convict and sentence Guinn for his non-criminal conduct: possession of a firearm under a lower mens rea standard than that required by 18 U.S.C. § 922g(a)(1), as articulated in Rehaif. Thus, habeas relief in a case like this is indeed being used to "attack convictions and sentences entered by a court without jurisdiction," *United*

States v. Addonizio, 442 U.S. 178, 185 (1979). In order to vindicate under Rehaif, Guinn must be allowed to petition for § 1651 relief.

6. Whether the US Appeals Court for the 5th Circuit error was bias and/or prejudice toward the evidence pursuant to Rehaif?

Guinn doggedly maintained his innocence (and does to this day)—insisting that under Rehaif creates a new substantive law. Guinn placed his faith in the justice system, trusting he would get due process and a fair hearing.

Guinn's faith was misplaced.

In Guinn's request for relief under Rehaif —and spanning since (2019)—bedrock judicial norms were dishonored.

Lady Justice wears a blindfold because justice is supposed to be meted out evenhandedly. She holds scales because evidence is supposed to be weighed impartially. These ancient symbols of fairness and clearsightedness—the very moral force underlying a just legal system—are mocked if one side can rig the game by calling its own balls and strikes. The government conflict of interest was undeniable, and it flattened Guinn's constitutional guarantee of a fair hearing and relief under Rehaif.

More broadly, this disturbing case also underscores that the American legal system regularly leaves constitutional wrongs unrighted. Many worthy § 1651 claims go unfiled, and those that are filed must navigate a thicket of judicial landmines that shield government wrongdoing, thus turning valid claims into vanquished ones.

When the current Chief Justice of the United States appeared before the Senate Judiciary Committee in 2005, he famously invoked baseball, assuring the nation, "I will remember that it's my job to call balls and strikes and not to pitch or bat."[3] The lower Courts entering the playing field was already lopsided, with one side secretly acting as pitcher, batter, and umpire all at once.

Rabid sports fans howl nonstop about blown calls and revel in accusing officials of losing their team the game—or even rigging it. We expect fair play in sports. So too in courts. We want all of life's arbiters to enforce the rules impartially. And in litigation, America's other national pastime, judges (unlike umpires who simply

[3] Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States Before the S. Comm. on the Judiciary, 109th Cong. 55 (2005) (statement of John G. Roberts, Jr., Nominee to be Chief Justice of the United States).

shout, "You're out!") are expected to painstakingly explain why something is inside or outside the legal strike zone. The lower courts result is difficult to explain. What allegedly happened here is utterly bonkers.

The Supreme Court put it plainly generations ago: "A fair trial(hearing) in a fair tribunal is a basic requirement of due process." We have been equally clear: "[F]undamental to the judiciary is the public's confidence in the impartiality of our judges and the proceedings over which they preside." See *United States v. Jordan, 49 F.3d 152, 155 (5th Cir. 1995)*. Taking Guinn's well-pleaded allegations as true—as we must under Rehaif—he has suffered the fallout of a criminal justice system that offended the gravest notions of fundamental fairness. Guinn seeks accountability for unconstitutional wrongdoing that upended his life.

The Court noted a few examples of cases where a § 922(g) charge may be akin to a "snare for the unsuspecting," thus necessitating a mens rea requirement for status. First, in the immigration context, the Court contemplated a scenario in which a young child is brought unlawfully into the United States, and is therefore unaware of his unlawful status. Second, it discussed a situation in which someone is "convicted of a prior crime but sentenced only to probation, [and] does not know that the crime is 'punishable by imprisonment for a term exceeding one year.'" Finally, and notably, the Court cited the Games-Perez case where the judge misinformed the defendant of the grade of the prior

conviction and for which it declined to issue certiorari only six years earlier.

To drive this point home, Guinn's Presentence Investigation Report (PSR) reflects that he had one prior adult criminal conviction, which, establishes that Guinn received probation in Terrance Guinn vs. State of Louisiana Case No. 42042 (1997). Moreover, the warrant that was issue for Guinn in Terrance Guinn vs. State of Louisiana Case No. 42042 (1997), clearly acknowledge that Guinn was on probation. See Appendix C

The government nor the Lower Courts cannot dispute that when Guinn was sentenced for his predicated conviction in Terrance Guinn vs. State of Louisiana Case No. 42042 (1997), he was sentence to probation.

It is the established law that when a conviction is based upon conduct which no longer constitutes a crime, such conviction no longer stands even though it occurred before the law recognized that the conduct was not a crime. *United v. Addonizio, 442 U.S. 178, 187, 99 S.Ct. 2235, 2241, 60 L.Ed.2d 805 (1979)* (not to set aside a conviction in such circumstances would be a "complete miscarriage of justice").

7. The US Appeals Court for the 5th Circuit Repeated Misapplication of the Frivolousness Standard.

In United States v. Hoffman, the Fifth Circuit

dismissed the defendant's appeal as frivolous based on a waiver of the defendant's right to appeal contained in a plea agreement." However, prior to the dismissal, the defendant had explained that there were two reasons why the waiver was unenforceable and provided decisions from other courts directly supporting her specific contentions. First, the defendant, who was challenging the voluntariness of her guilty plea on appeal, noted that other courts had held that a claim that a guilty plea was involuntary cannot be waived in a plea agreement. Second, the defendant noted that the district court had informed her at sentencing that she had a right to appeal and the prosecution stood silent in response to the court's assurance. She cited decisions by other courts that held that a district court's statement at sentencing that an appeal was permitted, without any objection from the prosecution, rendered an appeal waiver void. Although these decisions by other circuits were cited and discussed in Hoffman's pleadings on appeal, the Fifth Circuit made no reference to the contrary decisions of other courts and summarily dismissed the appeal as frivolous based on the waiver provision in the plea agreement. [4]

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[4] See U.S. v. Hoffman, No. 96-20836, slip op. at 1-2 (5th Cir.June 17, 1997); see also U.S. v. Hoffman, No. 96-20836, Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc (5th Cir. July 24, 1997).

The Fifth Circuit's finding of frivolousness in UNITED STATES OF AMERICA v. Terrance Guinn No. 23-50386 was in direct conflict with prior, decisions of the United States Supreme Court applying Rehaif, which have held that a new rule of law that applies retroactively to Guinn innocence. The Fifth Circuit's holding in UNITED STATES OF AMERICA v. Terrance Guinn No. 23-50386 that the petitioner's challenge to his guilty plea was frivolous flies in the face of such well-established binding authority.

In *White v. Johnson, 79 F.3d 432, 437 (5th Cir. 1996)*, the habeas petitioner contended that his death sentence was unconstitutional because it would constitute cruel and unusual punishment to execute him after he had spent nearly two decades on death row. The Fifth Circuit denied CPC on this claim even though the Supreme Court in another case recently had entered a stay of execution so that the lower courts could consider the same issue. According to the Supreme Court's well-established standard governing stays of execution, the Court would not have entered a stay of execution on the issue unless it presented "substantial grounds upon which relief might be granted" and, furthermore, that there was a "reasonable probability" that certiorari would be granted and a "significant possibility" that the issue would prove meritorious. Nevertheless, despite this recent action by the Supreme Court on the very same issue in another case, the Fifth Circuit in White did not even view the issue to be worthy of a CPC.

Without a doubt, indigent prisoners' direct appeals and habeas corpus appeals have burgeoned, occupying an increasingly larger share of the Fifth Circuit's docket. However, the Supreme Court has held that the application of the frivolousness standard in defendants' "appeals from criminal convictions cannot be used as a convenient valve for reducing the pressures of work on the courts." See *Coppedge v. U.S., 369 U.S. 438, 450 (1962)*.

An appellate court should resolve all doubts and ambiguous legal questions in favor of a defendant in deciding whether an issue is legally frivolous. When an issue presented on appeal finds direct support in a decision of one or more other lower courts and the issue has been resolved by an authoritative decision of the Supreme Court, the issue is obviously "pellucid" and, by definition, nonfrivolous.

CONCLUSION

The petition for a writ of certiorari should be granted; and any other remedy that this Court deems just and proper.

Respectfully submitted,

Terrance Guinn
110 Royal Street
Port Gibson, MS 39150
(601) 448-5187

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 23-60386

UNITED STATES OF AMERICA,
Plaintiff- Appellee,

Versus

TERRANCE CARVELL GUINN,
*Defendant-*Appealant

Appeal from the United States District Court for the
Southern District of Mississippi
USDC No. 5:23-CV-48

Before Stewart, Graves, and OLDHAM,
Circuit Judges.

PER CURIAM: *

Terrance Carvell Guinn, a former federal prisoner, moves for a certificate of appealability (COA) to appeal the denial of his motion challenging his conviction for possession of a firearm by a convicted felon; in his motion, he sought relief under 28 U.S.C. § 2255 and coram nobis relief under 28 U.S.C. § 1651. Guinn

contends that the district court erred by (i) dismissing the § 2255 claim because he has completed his sentence and (ii) determining that his request for coram nobis relief is barred by his prior waiver of his right to challenge his conviction in a postconviction proceeding.

To obtain a COA with respect to denial of § 2255 motion, a prison must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483 (2000). When a district Court has denied a request for habeas relief on procedural grounds, the prisoner must show "that jurist of reason would find it debatable whether petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court in its procedural ruling." Slack, 529 U.S. at 484.

Guinn fails to make the necessary showing. See id. Accordingly, his motion for COA as to the claim for § 2255 relief is DENIED. In light of this failure, we do not reach whether the district court erred by denying an evidentiary hearing on this claim. See United States v. Davis, 971 F.3d 524, 534-35 (5th Cir. 2020).

Because Guinn is not required to obtain a COA to appeal the denial of his claim for coram nobis relief, we DENY a COA on this claim as unnecessary. See 28 U.S.C. §

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* This opinion is not for publication see forth in 5TH CIRCUIT RULE 47.5.

2253(c)(1)(B). Guinn fails to raise a postconviction waiver barred his coram nobis claim, see United States v. Barnes, 953 F.3d 383, 386 (5th Cir. 2020), or that the court abused its distraction by denying this claim without first conducting an evidentiary hearing, see United States v. Massey, 79 F.4th 396, 402 n.3 (5th Cir. 2023). Accordingly, we DISMISS as frivolous his appeal from the denial of coram nobis relief. See 5th Cir. R. 42.2.

File December 6, 2023

APPENDIX B

In The United States District Court
For The Southern District Of Mississippi
Western Division

USA
Plaintiff.
v. Criminal No 5:99-cr-8-DCB
Terrance Guinn
Defendant.

ORDER

BEFORE THE COURT are Defendant Terrance Guinn's ("Defendant") Motion Pursuant to 28 U.S.C. § 2255 and 28 U.S.C. § 1651 ("Motion") [ECF No. 85] and his Motion for Hearing [ECF No. 86]. The Court, having examined the Motions, the record, the applicable legal authority, and being fully informed in the premises, finds as follows:

I. Procedural and Factual Background

On December 30, 1997, a Lincoln Parish, Louisiana court convicted Defendant of a felony charge of Possession of a Schedule I Controlled Substance with Intent to Distribute. [ECF No. 77] at 1. On March

9, 1999, a federal grand jury in the Southern District of Mississippi indicted Defendant for Possession of a Firearm by a Convicted Felon. Id. The grand jury used the Louisiana conviction as a predicate offense to establish Defendant's status as a felon in the federal case. Id. The Defendant subsequently pleaded guilty to the federal charge and was sentenced by the Court on August 16, 1999. Id. Following a term of imprisonment, the Court ended Defendant's supervised release on August 19, 2005. Id. at 2. Since that time, Defendant has filed numerous motions for post-conviction relief. The Court has denied each substantive motion on various grounds, primarily based on Defendant's waiver of his right to pursue post-conviction relief. [ECF No. 64].

On May 30, 2023, Defendant filed his current Motion, in which he requests relief pursuant to 28 U.S.C. § 2255 and 28 U.S.C. § 1651, and on June 15, 2023, Defendant requested a hearing on this Motion. [ECF No. 85]; [ECF No. 86].

II. Standard

The writ of error coram nobis is an extraordinary remedy of last resort, available only in compelling circumstances where necessary to achieve justice. See United States v. Swindall, 107 F.3d 831, 834 (11th Cir. 1997). A court's jurisdiction over coram nobis petitions is limited to the review of errors "of the most fundamental character." United States v. Mayer, 235

U.S. 55, 69 (1914); see also Carlisle v. United States, 517 U.S. 416, 428-29 (1996) (citing Mayer for the applicable standard governing coram nobis petitions, and stating that it is difficult to conceive of a situation in a federal criminal case today in which coram nobis relief would be necessary or appropriate); Granville v. United States, 613 F.2d 125, 126 n.1 (5th Cir. 1980) (treating Mayer standard as controlling).

III. Analysis

As an initial matter, the Court will deny relief pursuant to 28 U.S.C. § 2255 because Defendant has already completed his sentence. United States v. Hay, 702 F.2d 572, 573 (5th Cir. 1983). Following release, former inmates are instead generally "entitled to an opportunity to demonstrate sufficient detrimental collateral consequences to justify relief pursuant to a petition for writ of error coram nobis" pursuant to 28 U.S.C. § 1651(a). Id. at 574.

Nevertheless, the Court must deny Defendant's Motion in its entirety because Defendant expressly waived the right to pursue post-conviction relief and the Fifth Circuit upheld this waiver in an opinion in which it noted the frivolity of Defendant's earlier, similar petition for writ of error coram nobis. [ECF No. 64] at 2. Therefore, Defendant's waiver is valid, and he is ineligible for all post-conviction relief, including relief

pursuant to 28 U.S.C. § 1651. See United States v. Wilkes, 20 F.3d 651, 653-54 (5th Cir. 1994) (defendant "bound by his plea agreement" waiving his right to seek post-conviction relief).

Had the Court not denied Defendant's Motion for these defects, it likewise would have denied relief pursuant to its Case 5:23-cv-00048-DCB Document 1 Filed 07/07/23 Page 3 of 5 4 dismissal with prejudice of Defendant's similar, recent motion in companion case 5:22-CV-38-DCB-LGI, in which the Court denied Defendant's motion for a writ of error coram nobis for dishonest pleading.

The Court will likewise deny Defendant's Motion for a Hearing. Where the record conclusively shows that a petitioner is not entitled to the requested post-conviction relief, the Court may refuse to hold a hearing. United States v. Duran, 934 F.3d 407, 411 (5th Cir. 2019). The Court concludes that Defendant is not entitled to relief because, among other reasons, he validly waived his right to pursue such relief. [ECF No. 64] at 2. Therefore, the Court will deny Defendant's Motion for a Hearing. [ECF No. 86].

IV. Conclusion

The Court takes note of Defendant's lengthy history of repeat filings and is compelled to warn Defendant that repetitive, frivolous, malicious, and

vexatious filings will result in sanctions in this and other federal courts. Gelabert v. Lynaugh, 894 F.2d 746, 748 (5th Cir. 1990) (issuing caution to pro se prisoner "to think twice before cluttering our dockets with frivolous ... litigation.").

For the foregoing reasons, Defendant's Motion [ECF No. 85] and Motion for Hearing [ECF No. 86] shall be denied.

ACCORDINGLY,

IT IS HEREBY ORDERED that Defendant's Motion Pursuant to 28 U.S.C. § 2255 and 28 U.S.C. § 1651 [ECF No. 85] and Motion for Hearing [ECF No. 86] are DENIED.

SO ORDERED, this 7th day of July, 2023.

/s/ David Bramlette
David C. Bramlette III
United States District Judge

APPENDIX C

WARRANT

In the Name of The State of Louisiana, to All and Singular the Sheriffs and others with power of arrest of the State of Louisiana:

Whereas, Michael C. LaCroix, P&P Officer 2 has this day advised this Court that on the 30th day of December, A.D. 1997, one Terrance C. Guinn, hereinafter referred to as the aforesaid, was convicted of the offense of Possession of Marijuana WITD in the Third Judicial District Court of Lincoln Parish, which Court suspended the execution of sentence and placed the aforesaid on probation for five years in accordance with the provisions of Articles 893-901 of the Louisiana Criminal Code of Procedure and that the aforesaid has not properly conducted himself, but has violated the condition of his probation in a material respect by failing to obey the instructions of the Court.

THESE ARE, THEREFORE, to command you to arrest instanter the aforesaid Terrance C. Guinn, and bring him before me to be dealt with according to law.

Given under my hand and seal this 10th day of August, A.D. 1998

Cynthia T. Woodard
For Honorable James H. Boddie, Jr., Judge

U.S. Const. Amend. V states, in relevant part: "No person shall be * * * deprived of life, liberty, or property, without due process of law."

U.S. Const. Amend. VIII states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

28 U.S.C. § 1651 states, in relevant part:

(a)The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 2255 states, in relevant part:

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion